91-648

Supreme Court, U.S.
FILED
OCT 21 1991
OFFICE OF THE CLERK

Case No. _____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1991

ANDREW GALE,

Petitioner,

v.

HOME SAVINGS OF AMERICA F.A., as Successor in interest to HYDE PARK FEDERAL SAVINGS & LOAN ASSOCIATION OF CHICAGO,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

ANDREW GALE
1348 E. 48th Street
Chicago, Illinois 60615
(312) 373-4184
Pro Se

QUESTIONS PRESENTED FOR REVIEW

THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT UPHELD A DIVERSITY ACTION BROUGHT BY HOME SAVINGS OF AMERICA IN SPITE OF A PREVIOUS JUDGMENT OF FORE-CLOSURE RULING GRANTED IN THE COOK COUNTY CIRCUIT COURT OF ILLINOIS AND AN ACCOUNTING PRESENTED BY THE PETITIONER GALE WHICH SHOWED NO LIABILITY EXISTED. THE TRIAL COURT REJECTED GALE'S OBJECTIONS TO THE JUDGMENT SOUGHT AND REFUSED TO CONSIDER ANY FACTS HE PRESENTED TO THE COURT.

DID THE TRIAL COURT BY REFUSING TO CONSIDER THE FACTS PRESENTED BY GALE, DENY HIM HIS CONSTITUTIONAL RIGHT TO CONTEST ALLEGATIONS OF LIABILITY MADE AGAINST HIM UNDER THE 5TH AMENDMENT PROTECTION OF DUE PROCESS, AND DID THE RULING OF THE APPELLATE COURT SANCTION THE PROCEDURAL ERRORS OF

THE TRIAL COURT AND VIOLATE THE PRINCIPLE OF COLLATERAL ESTOPPEL?

CONSTITUTIONAL PROVISIONS, 5TH AMENDMENT OF THE UNITED STATES CONSTITUTION.

THE ORDER THE PETITIONER IS SEEKING A REVIEW ON IS CONTAINED IN APPENDIX C.

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1991

ANDREW GALE,

Petitioner,

v.

HOME SAVINGS OF AMERICA F.A., as Successor in interest to HYDE PARK FEDERAL SAVINGS & LOAN ASSOCIATION OF CHICAGO,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

I, Andrew Gale, a non-attorney, petitions for a Writ of Certiorari and asks this Court to vacate the ruling of the United States Court of Appeals for the Seventh Circuit in affirming the Judgment of Foreclosure and Sale granted by the District Court for the Northern District of Illinois, Eastern Division.

JURISDICTIONAL STATEMENT

On July 24, 1991 the United States Appellate Court of the Seventh Circuit issued a ruling affirming the decision of the trial court in a diversity action, granting a motion for foreclosure and sale of the property at 1348 East 48th Street at Chicago, Illinois. The Appellate Court on August 19, 1991 also denied a motion by the Petitioner Gale for a stay of its mandate pending the Petitioner submitting a petition for a Writ of Certiorari. The Petitioner seeks a review of the rulings of the Appellate Court under the authority of Title 28 U.S.C. 1254(l) which grants authority to the Supreme Court to review decisions of the Appellate Court according to its discretion under the guidelines of Rule 10 of the Supreme Court rules.

STATEMENT OF THE CASE

In 1981 Hyde Park Federal Savings Association sought and was granted a Judgment of Foreclosure and Sale in Cook County Circuit Court for the property in question. The Petitioner Gale filed a Chapter 13 plan in Bankruptcy Court to pay

off in three years the entire debt on the property in 1982. The plan was completed in February 1986, with all parties paid the amounts they stipulated.

In October 1986 Home Savings of America, the successor to Hyde Park Federal Savings, filed a motion for a Judgment of Foreclosure in Federal District Court in the Northern District of Illinois, with jurisdiction based on a diversity of citizenship, for an additional $13,000 it claimed the Petitioner Gale owed on the debt. The motion was denied, and the case referred to Bankruptcy Court by the trial Judge to determine the amount owed, if any.

The Petitioner sought to bar Home Savings from any foreclosure action and to show cause, since no liability had been demonstrated in Bankruptcy Court (United States Civil Code, Section 1328, 524). Both motions were denied in July 1987 when the Respondent presented its accounting of money received and owed in Court. The Petitioner was given no opportunity to study and contest the figures presented, and his motion to reopen the case was denied in September 1987, with

the Judge indicating a remedy was available in District Court.

In September 1987 the Respondent Home Savings motioned to reopen the case in Federal District Court, and received a Judgment of Foreclosure and Sale on September 24, 1987. On November 2, 1987 the Petitioner Gale filed a Chapter 13 plan in Bankruptcy Court. On December 9, 1987 the Gale's attorney filed a motion to vacate the Judgment of Foreclosure against him. No action was taken on the motion because the case was dismissed the next day by the Judge, without motion from either party. In May 1988 the Chapter 13 plan was approved in Bankruptcy Court in spite of the fact that the attorney for Home Savings did not attend the trustee's meeting, thus avoiding questions on accounting. The mortgage was reinstated by the Bankruptcy Judge in June 1988.

On December 1, 1988 the Petitioner sought to vacate the Judgment of Foreclosure against him, and presented an accounting which showed the liability was a few thousand dollars instead of the $13,000 claimed. This motion was denied due to the Bankruptcy case, where the amount owed

should be determined according to the trial Judge. After being told by the Bankruptcy Judge that the issue of the amount owed should be settled in District Court, the Petitioner again filed a motion to vacate the Judgment on December 19, 1988. This motion was denied with sanctions against the Petitioner's attorney. This denial was appealed to the Appellate Court (89-1350).

The Respondent filed a motion in December 1988 in Bankruptcy Court to modify the stay due to a default in payments by Gale. The motion was granted and the case was dismissed on February 15, 1989.

On February 16, 1989 the Respondent filed a Motion for Summary Judgment of Foreclosure and Sale. The Petitioner filed an objection to the motion with an accounting to contest the amount claimed for liability, showing that a liability of a few hundred dollars existed. The Respondent filed a motion to strike the objections of the Petitioner Gale. The motion was granted by the Judge, and was appealed to the United States Appellate Court by Gale (89-2231).

On July 24, 1991 the Appellate Court issued a ruling affirming the decision of the trial court granting foreclosure and sale. The Appellate Court ruled that the mortgage was reinstated because Hyde Park Federal advanced money for an insurance premium that the Petitioner owed, which was included in the stipulated amount filed in Court by the Respondent. This ruling is contrary to the ruling by the courts in other cases (Jenkins 14, Bank 748 N O Ill. 1981), (P. 808 and 810 Lindberg and Bender, October 1987) which have clearly indicated that a mortgage has to be reinstated by court order. This ruling ignored the errors of the lower court that the Petitioner pointed out, and has the effect of sanctioning the actions of the lower court in denying the Petitioner his right to contest the allegations of liability made against him.

REASONS FOR GRANTING WRIT

Certiorari should be granted in this case for the following reasons: (1) Gale presented a point of law showing that the mortgage contract had been voided by the action brought in the

state court. Gale made accelerated payments over a period of three years to pay off the debt on the property and completed that process during the second bankruptcy case. Contrary to the principles of due process, the trial Judge refused to consider his evidence, Logan v. Zimmerman Brush Co., 455 U.S. 422, 437, 1982, Armstrong v. Manzo, 380 U.S. 545, 552 (1965), Haines v. Kerner, 404 U.S. 519 (1972).

The Appellate Court in its ruling never addressed the issues raised by the Petitioner of discrepancies in accounting provided by the Petitioner and Respondent, nor did it address the issue of whether the trial Judge ruled on the merits of the case or violated judicial procedure in his rulings. In fact, the accounting issue has never been adjudicated in Court. The Respondent's accounting has been accepted as fact and the Petitioner's accounting has been suppressed. The Appellate Court in effect sanctioned the actions of the trial Judge in denying the Appellant his right to be heard and present evidence in his behalf.

CONCLUSION

This ruling underscores the atmosphere of prejudice that the Petitioner Gale lives in, where he cannot receive adequate legal counsel that will serve his interest, and where he cannot receive the basic rights guaranteed him under the Constitution in the courts. The Petitioner prays that certiorari be granted in this case because he has not received a fair and just hearing in this climate of prejudice. The Petitioner prays that the Court will vacate the ruling of the Seventh Circuit Appellate Court and reprimand this case back to the district with instructions to evaluate his accounting in the proceedings.

Respectfully submitted,

ANDREW GALE
1348 East 48th Street
Chicago, Illinois 60615
(312) 373-4184

Pro Se

APPENDIX

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APPENDIX A

ORDER

Before the court is defendant Gale's Motion to Vacate Default Judgment. For the following reasons, Gale's motion is denied.

First, the record indicates that a Judgment on the Pleadings was entered against Gale on September 24, 1987. Therefore, no default judgment is presently pending against Gale.

Secondly, even if Gale's motion may be viewed as one seeking an accounting as stated in Paragraph 12 of his motion, the motion must be denied. Transcripts of the proceedings before Bankruptcy Judge Coar on January 27, 1988 indicate that the matter of setting a dollar amount on any outstanding liability was to be handled in the bankruptcy court. Therefore, this motion is brought in an improper forum.

Home Savings of America has urged the court to enter an award of $687.50 for attorneys' fees associated with answering Gale's motion pursuant to Rule 11. Rule 11 indicates that a

frivolous pleading shall give rise to sanctions against the attorney, client or both. The court orders attorney Scott to pay $250.00 as reasonable attorneys' fees to Home Savings. A reasonable inquiry into the record of this case would have revealed the impropriety of the present motion.

It is so ordered.

Charles P. Kocoras
United States District Judge

Dated: January 18, 1989

APPENDIX B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

HOME SAVINGS OF AMERICA, F.A., as successor in interest to HYDE PARK FEDERAL SAVINGS & LOAN ASSN., OF CHICAGO,	)	
Plaintiff,	)	
v.	)	No. 86 C 7986
ANDREW GALE and KEN-WOOD CONDOMINIUM ASSN.,	)	
Defendants.	)	

MEMORANDUM OPINION

CHARLES P. KOCORAS, District Judge:

This matter is before the court on plaintiff Home Savings of America's ("Home Savings") motion to strike defendant Andrew Gale's ("Gale") objections to the amended Judgment of Foreclosure and Sale. For the following reasons, plaintiff's motion is granted.

FACTS

On December 1, 1988, Gale filed a motion to vacate default judgment. On January 18, 1989, this court denied that motion. On February 16, 1989, plaintiff presented its amended judgment of foreclosure and sale so as to update the amount due since the time the original Judgment of Foreclosure and Sale was entered on September 24, 1987. Gale filed objections to the amended judgment setting forth issues previously asserted and decided. This motion to strike followed.

DISCUSSION

Home Savings alleges that Gale's objections to the amended Judgment of Foreclosure and Sale should be stricken as frivolous and plaintiff should be awarded sanctions pursuant to Rule 11 in the amount of $100.00.

The objections filed by Gale continue to argue that neither this court nor the bankruptcy court have made findings of fact concerning Gale's desire for an accounting. The objections set

forth the law of the merger in Illinois and question whether any sum at all is due under the mortgage. These arguments are an inappropriate response to a final Judgment Order. The court also finds that Gale's arguments lack merit.

In April of 1987 in the bankruptcy court, Gale challenged the propriety of reinstating the mortgage following the 1981 foreclosure judgment. No less than nine (9) in-court proceedings were had concerning Gale's challenge until Judge Coar ruled on July 29, 1987 that the "debtor's (Gale) motion to bar Home Savings from foreclosure action is denied." Gale did not appeal this ruling and this court is not in a position to review Judge Coar's findings.

Similarly, it is clear from the January 27, 1988 transcript of proceedings before Judge Coar that the issue of an accounting was to be handled in the bankruptcy court. The parties and the bankruptcy court addressed the accounting issue with full knowledge that this court found the bankruptcy court to be the most appropriate forum to hear the accounting issue. The present motion lacks merit.

For the foregoing reasons, Home Savings' motion to strike defendant's objections is granted. Home Savings' request for fees is denied.

It is so ordered.

Charles P. Kocoras
United States District Judge

Dated: May 15, 1989

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
CHICAGO, ILLINOIS 60604

Submitted July 17, 1991*
July 24, 1991

Before

Hon. RICHARD D. CUDAHY, Circuit Judge

Hon. JOHN L. COFFEY, Circuit Judge

Hon. WILBUR F. PELL, JR., Senior Circuit Judge

HOME SAVINGS OF AMERICA, F.A., as Successor in interest to Hyde Park Federal Savings and Loan Association of Chicago,	) Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
Plaintiff-Appellee,	) No. 86 C 7986
Nos. 89-1350 vs. & 89-2231	) Charles P. Kocoras,) Judge.
ANDREW GALE, Defendant-Appellant.	

ORDER

Defendant-Appellant, Andrew Gale, appeals from the district court's entry of an amended judgment of foreclosure

and sale in favor of Home Savings of America, the holder of his residential mortgage.

I.

In October 1986, Home Savings as successor in interest to Hyde Park Federal Savings and Loan filed a complaint in the district court to foreclose on a residential mortgage issued to Gale. Gale filed his answer, asserting as an affirmative defense that the debt had been fully discharged in previous Chapter 13 bankruptcy proceeding. Gale also asserted that jurisdiction rested with the bankruptcy court and not the district court. As such, Gale filed a rule to show cause in the bankruptcy court seeking to prohibit Home Savings from proceeding with the foreclosure action in the district court. In response to Gale's filing of the rule to show cause in the bankruptcy court, Judge Kocoras granted a motion to dismiss the action in the district court with leave to reinstate.

Between May 1987 and December 1987, the bankruptcy judge held several hearings to determine whether Gale's debt to Home Savings was fully discharged in the prior bankruptcy

proceeding, barring Home Savings from future recovery. Eventually, the bankruptcy court denied the rule to show cause, enabling Home Savings to proceed with the foreclosure action in the district court. In response to that order, Judge Kocoras vacated the dismissal and Gale filed an answer. Gale reasserted in his answer that Home Savings was estopped from bringing the second foreclosure action because the mortgage had been extinguished in the prior bankruptcy action. Judge Kocoras rejected Gale's argument and entered a judgment of foreclosure and sale against Gale in September 1987.

After the judgment of foreclosure was entered in the district court, Gale filed a second bankruptcy proceeding. The district court action was again dismissed with leave to reinstate once the Chapter 13 stay was lifted. In the proceedings in the bankruptcy court, Home Savings filed an accounting and the parties apparently agreed at that time that the debt had not been fully discharged in the previous bankruptcy proceeding because the plan had failed to consider money advanced by Home Savings for insurance and real estate taxes on the

property. The parties agreed upon the amount due and Home Savings filed a proof of claim with the bankruptcy court. Thereafter, the bankruptcy judge entered an agreed special mortgage designed to cure the arrearage and to bring the mortgage current within twenty-four months. Gale made several payments under the plan and then he refused to make further payments, once again asserting that the obligation had been fully discharged in the initial bankruptcy proceeding. In response to Gale's cessation of making payments, the bankruptcy judge modified the stay, permitting the foreclosure action to proceed in the district court.

The judgment of foreclosure was reinstated in the district court. Gale filed a motion to vacate the judgment which was denied. Gale filed a second motion to vacate and again the district court denied the motion. At the time of the second denial, the district court granted Home Saving's motion for sanctions, awarding fees for Gale's pursuit of a frivolous second motion to vacate. After the judgment was reinstated in the district court, Home Savings filed a motion to amend

judgment because the figures in the 1987 judgment were stale. The district court granted the motion and amended the judgment. This appeal followed.

II.

On appeal, Gale is challenging the district court's denial of his motion to vacate the judgment of foreclosure. Gale argues that the original mortgage was extinguished as a result of the 1981 bankruptcy proceeding and therefore, he maintains that Home Savings is precluded from maintaining the second foreclosure action relating to the tax and insurance advancements made by Home Savings. Home Savings counters that the mortgage was not extinguished in the original bankruptcy proceeding. According to Home Savings, the confirmation of the Chapter 13 plan reinstated the mortgage. Thus, Home Savings was entitled to pursue a second foreclosure action because Gale was in default on the reinstated mortgage.

This case presents an analogous issue to the one decided by this court in In re Clark, 738 F.2d 869 (7th Cir. 1984),

although that case was decided under Wisconsin law. The Clark court determined that "the power to 'cure' a default provided by [11 U.S.C.] § 1322(b)(5) permits a debtor to de-accelerate the payments under a note secured by a residential property mortgage," despite the fact that a judgment of foreclosure had been entered on the property. Id. at 874. The court noted that irrespective of the foreclosure judgment the homeowners retained an interest in the property under Wisconsin law which they could seek to protect as part of the bankruptcy estate. Id. at 871.

In Illinois, as in Wisconsin, a judgment of foreclosure does not extinguish the mortgagor's interest in the property. Legal title to the property could not pass until the redemption period had passed. See Ill. Rev. Stat. Ch. 110, § 12-128 (1985). When Gale filed his initial Chapter 13 bankruptcy, the redemption period on the property had not expired. Thus, Gale's filing of the bankruptcy proceeding had the effect of deaccelerating his mortgage payments. In addition, the confirmation of the bankruptcy plan, which did not provide for

Home Savings' advancement of post-petition insurance costs and real estate taxes, had the effect of reinstating the mortgage. As such, Home Savings retained the right to file a second foreclosure action when Gale refused to pay the taxes and insurance costs advanced by Home Savings, because Gale was in default on the mortgage for a second time. The fact that Gale had cured his previous default in the first bankruptcy does not extinguish Home Savings' right to resort to a foreclosure proceedings where, as here, there is a second, subsequent default.

With the confirmation of the bankruptcy plan in 1981, the debt was only partially discharged and the mortgage was reinstated. Under the mortgage agreement, Gale was required to pay real estate taxes and insurance costs. He failed to do so and Home Savings advanced the money to make those payments. As such, Gale was in default on the mortgage and Home Savings was within its rights to pursue a foreclosure action to recover the arrearage. The district court properly entered a judgment of foreclosure in response to Gale's

default. In addition, the court properly amended the judgment to reflect the change in the amount owing related to the passage of time. Therefore, the district court's decision entering an amended judgment of foreclosure and sale is AFFIRMED.

*After preliminary examination of the briefs, the court notified the parties that it had tentatively concluded that oral argument would not be helpful to the court in this case. The notice provided that any party might file a "Statement as to Need of Oral Argument." See Fed. R. App. P. 34(a); Circuit Rule 34(f). No such statement having been filed, the appeal has been submitted on the briefs and record.

APPENDIX D

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
CHICAGO, ILLINOIS 60604

August 19, 1991

Before

Hon. WILBUR F. PELL, JR., Circuit Judge

Hon.

Hon.

HOME SAVINGS OF AMERICA, F.A., etc., Plaintiff-Appellee,	) Appeals from the United States District Court for the Northern District of Illinois, Eastern Division
Nos. 89-1350 and 89-2231 v.	) No. 86 C 7986
ANDREW GALE, Defendant-Appellant.	) Charles P. Kocoras, Judge

This matter comes before the court for its consideration of the following documents:

1. "MOTION TO STAY THE MANDATE" filed herein on August 8, 1991, by the pro se appellant.

2. "AMENDED MOTION" filed herein on August 13, 1991, by the pro se appellant.

On consideration thereof,

IT IS ORDERED that these motions are DENIED.

APPENDIX E

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH DISTRICT

Home Savings of America	)	
	)	
Plaintiff-Appellee	)	
	)	
vs.	)	No. 89-1350
	)	89-2231
Andrew Gale	)	
	)	
Defendant-Appellant	)	

MOTION TO STAY THE MANDATE

Motion to stay the mandate of the Court of its July 24, 1991 ruling affirming the decision of the trial court on the appeal of the appellant.

The Appellant in this matter is requesting a stay of the mandate of its July 24, 1991 ruling pending the Appellant filing a petition for a Writ of Certiorari to the United States Supreme Court. The Appellant will raise the following issues in his Writ of Certiorari: the denial of the Appellant's constitutional right to due process by the trial court, an

infringement of the constitutional protection against double jeopardy, judicial prejudice against the Appellant in the ruling by the justices at both the trial court and appellate level. The Appellant will complete his petition within the prescribed time period.

Respectfully submitted,

ANDREW GALE
1348 East 48th Street
Chicago, Illinois 60615
(312) 373-4184

APPENDIX F

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH DISTRICT

Home Savings of America	)	
	)	
Plaintiff-Appellee	)	
	)	
vs.	)	No. 89-1350
	)	89-2231
Andrew Gale	)	
	)	
Defendant-Appellant	)	

AMENDED MOTION TO STAY THE MANDATE

Amended Motion to stay the mandate of the Court of its July 24, 1991 ruling affirming the decision of the trial court on the appeal of the appellant.

The Appellant in this matter is requesting a stay of the mandate of the court of its July 24, 1991 ruling, pending the Appellant filing a petition for a Writ of Certiorari to the United States Supreme Court. The Appellant will raise the following issues in his Writ of Certiorari: the denial of the Appellant's constitutional right to due process by the trial

court, an infringement of the constitutional protection against double jeopardy, judicial prejudice against the Appellant in the ruling by the justices at both the trial court and appellate level. The Appellant will complete his petition within the prescribed time period.

Respectfully submitted,

ANDREW GALE
1348 East 48th Street
Chicago, Illinois 60615
(312) 373-4184

APPENDIX G

(Portion of Objections)

I, Robert L. Scott do hereby certify that a copy of this Objection to Amended Judgment of Foreclosure and Sale was hand delivered on the morning of February 15, 1989 to:

Fisher & Fisher, P.C.
30 N. LaSalle
Suite 2720
Chicago, Illinois 60620

_____
Robert L. Scott

1. Defendant objects to the Plaintiff's accounting of his indebtedness and in support thereof presents the following accounting supported by the Plaintiff's own figures included in Exhibit I provided to defendant in 1986.

a.	Loan Balance 1982 based on Plaintiff's figures	$ 20,495.23
b.	Interest for three years of Chapter 13 plan	3,747.74
	Total	$ 24,242.97

c.	Amount paid in original Chapter 13 (See Exhibit 2)	$-23,824.56
d.	Balance due	418.41
	Interest	40.41
	Principal balance as of 1985	458.82
e.	Real Estate taxes from 1981-1985	4,198.86
	Escrow real estate balance as of 1980	-1,446.00
	Balance Due	2,747.86
f.	1986 real estate tax Second installment	391.16
	Total	$ 3,139.02
g.	1988 real estate taxes	814.53
	Total	$ 3,943.55
h.	Principal Balance as of 1985	448.82
i.	Amount Due	4,402.37
j.	Amount paid in second Chapter 13 plan	$- 3,600.00
k.	Amount now due Exclusive of Plaintiff's attorneys fees, cost of suit and bankruptcy costs and fees	$ 802.37

NOTICE

I, Andrew Gale, do hereby certify that three copies of this Petition for a Writ of Certiorari were mailed on October 21, 1991 to:

Fisher & Fisher, Inc.
30 North LaSalle St.
Suite 2720
Chicago, Illinois 60602

Andrew Gale
ANDREW GALE, Pro Se

Subscribed and sworn to
before me this 21st day of
October, 1991.

" OFFICIAL SEAL "
ROSE MARIE KREMSKE
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 9/12/92

Rose Marie Kremske
Notary Public